IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,	)	
	)	2 CA-CR 2006-0268
Appellee,	)	DEPARTMENT A
	)	
v.	)	MEMORANDUM DECISION
	)	Not for Publication
JOSE CARLOS CRUZ,	)	Rule 111, Rules of
	)	the Supreme Court
Appellant.	)	
	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20050092

Honorable Howard Hantman, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General
By Randall M. Howe and Cassie Bray Woo — Phoenix
Attorneys for Appellee

Anjakos Brunner, P.C.
By Elizabeth Brunner — Tucson

and

The Chase Law Group
By Lorilee M. Gates — Studio City, CA
Attorneys for Appellant

P E L A N D E R, Chief Judge.

¶1 A jury found appellant Jose Cruz[1] guilty of first-degree murder, burglary, and theft of a means of transportation. The trial court sentenced him to life in prison without the possibility of parole for twenty-five years on the murder charge and concurrent, presumptive terms of 10.5 and 3.5 years' imprisonment respectively on the burglary and theft charges. He contends on appeal that he was not competent to stand trial and that there was insufficient evidence to support his burglary and theft convictions. We affirm.

Facts

¶2 We view the evidence and all reasonable inferences therefrom in the light most favorable to sustaining the convictions. *State v. Eggers*, 215 Ariz. 472, ¶ 2, 160 P.3d 1230, 1235 (App. 2007). On December 22 or early December 23, 2004, Cruz and co-defendant Linda Garcia, the victim's daughter, entered the victim's home with a baseball bat, beat and stabbed the victim to death, and then left in the victim's truck.[2] In the early morning hours of December 23, they were stopped by an Eloy Police officer because Cruz was driving the truck without its headlights on. Cruz identified himself to the officer, who ran a check for outstanding warrants and discovered that Cruz was a runaway juvenile.[3] The officer took

[1]Although Cruz captions his brief on appeal with the name "Jose Carlos Cruz, Jr.," the record does not show whether that is in fact his true name. He was indicted, convicted, and sentenced simply as "Jose Carlos Cruz," and we therefore use that name on appeal. To avoid any future confusion, we note the record reflects that his date of birth is August 7, 1988.

[2]Garcia was charged with Cruz in the same indictment, but she was tried separately.

[3]Cruz was sixteen years old at the time.

Cruz into custody but released him into his father's custody shortly thereafter. After leaving the police station, Cruz and his father met Garcia at a convenience store. They helped her get the truck started, and Cruz and Garcia drove to Cruz's home. Later that day, Cruz, Garcia, and three others took the truck to a gravel pit to dispose of it. Cruz admitted to the others that he and Garcia had killed Garcia's father. Garcia had a baseball bat with her, which she used to hit the truck and demonstrate how she had hit her father. Cruz had a knife with him, and he said he had stabbed the victim. Cruz, Garcia, and the others took turns driving the truck in the gravel pit. At some point the truck became stuck, and "[e]verybody" decided to burn it. Someone poured brake fluid in the cab, lit it on fire, and they all left. Cruz and Garcia were later arrested at Cruz's home.

Competency

¶3 In May 2005, Cruz's counsel filed a motion for a mental examination under Rule 11.2, Ariz. R. Crim. P. The trial court granted the motion, and Cruz was examined by Doctors Barry Morenz and Judith Becker. Cruz reported to both doctors that he had been hearing voices for years. Both opined that Cruz was "immature" and noted he had a limited understanding of the charges against him and the court system in general. Dr. Becker estimated Cruz's intelligence to be "within the below average to average range." Dr. Morenz found Cruz "marginally competent to stand trial" because he believed that Cruz could be sufficiently educated by his attorney to comprehend the proceedings and assist in his defense. Becker opined Cruz was incompetent to stand trial because of his "immaturity and

lack of familiarity with the court system." She also opined, however, that there was "a substantial probability that [Cruz would] become competent within a short period of time" and recommended "a competency restoration specialist educate [Cruz] as to the nature of proceedings within the criminal court system."

¶4 On July 28, 2005, the trial court found Cruz incompetent to stand trial under A.R.S. § 13-4510 because he was "unable to understand the nature of the proceeding and/or [wa]s unable to assist counsel" in his defense. The court ordered him committed to the Arizona State Hospital to be restored to competency. Cruz was admitted to the Adolescent Treatment Unit of the Arizona State Hospital on September 12, 2005.

¶5 Cruz was discharged on December 6, 2005. Dr. Thomas Geen[4] submitted a final report to the trial court. In it, he detailed Cruz's diagnoses and treatment, including Cruz's history of drug and alcohol use, and his reports of hearing voices. He reported that Cruz's treating physician, Dr. Ghafoor, had evaluated Cruz on November 22, 2005, and had concluded there was then a "consensus that [Cruz's] complaints of auditory hallucinations are grossly exaggerated." Geen's report also stated Ghafoor had noted that,

> when [Cruz] was asked to elaborate on his self-reported symptoms, he typically gave very vague and evasive replies; when pressed for details, he described characteristics that were not typical of genuine psychotic hallucinations. On the other

[4]We note that in his opening brief Cruz refers to this doctor as "Dr. Thomas Geen." The signature blocks on the doctor's reports also use the name Geen. But, the cover sheets on those reports and the state refer to the doctor by the name Green. We refer to him herein as Geen because that is how he signed his reports.

> hand, Dr. Ghafoor found his dysphoria, irritability, and anxiety about his legal dilemma to be "very understandable."

Ghafoor began to taper Cruz off of the anti-psychotic medications he had been taking and discontinued them completely by November 27.

¶6 Geen interviewed Cruz on December 1, 2005. He opined that Cruz had "been malingering symptoms of a psychotic disorder" and that Cruz had "the capacity to understand the nature and object of the proceedings against him, and assist with his own defense." On December 12, the trial court found Cruz competent to stand trial based on Geen's report. Cruz did not object. He contends on appeal, however, that the trial court erred by not sua sponte ordering a second competency evaluation after Cruz rejected a plea offer.

¶7 At a status conference the week before trial, Cruz's counsel informed the trial court that Cruz had rejected the plea offer. The court questioned Cruz directly about whether he understood the plea offer and whether he wanted to go to trial. Cruz stated unequivocally that he did understand, that he did want to go to trial, and no issue was raised about Cruz's competency. The day before trial, however, Cruz's counsel disclosed to the trial court a memorandum he had received just before the status conference from his investigator. In the memorandum, the investigator recounted that he had asked Cruz why he had rejected the plea offer, and Cruz had responded that "'[i]t was the devil's writing on that paper,' or words similar to that." When the investigator asked Cruz to explain, Cruz talked about a play or movie in which someone had "signed his soul away to the devil." The

investigator stated he had "the distinct impression that [Cruz] fails to grasp the concept of life in prison."

¶8 Cruz was not present when his counsel disclosed the memorandum. Counsel and the prosecutor then discussed with the trial court the prior competency proceedings, Cruz's responses to the court at the status conference a few days before, and Cruz's unremarkable conduct and apparent comprehension of issues discussed at an hour-long "free-talk" held two weeks earlier between Cruz and prosecutors in the presence of Cruz's attorney. Cruz's counsel did not move for a competency hearing during these discussions, and trial went forward as scheduled.

¶9 "It has long been accepted that a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial." *Drope v. Missouri*, 420 U.S. 162, 171, 95 S. Ct. 896, 903 (1975). "A trial judge is under a continuing duty to inquire into a defendant's competency, and to order a rule 11 examination *sua sponte* if reasonable grounds exist." *State v. Amaya-Ruiz*, 166 Ariz. 152, 162, 800 P.2d 1260, 1270 (1990). However, there are "no fixed or immutable signs which invariably indicate the need for further inquiry to determine fitness to proceed." *Drope*, 420 U.S. at 180, 95 S. Ct. at 908. And, a "trial court has broad discretion in considering all available information when determining the need for an additional competency examination." *Amaya-Ruiz*, 166 Ariz. at 163, 800 P.2d at 1271. We review a trial court's

competency determination for an abuse of discretion and will not substitute our judgment for that of the trial court when reasonable evidence supports its determination, even if "another finder of fact might have resolved the competency issue differently." *State v. Glassel*, 211 Ariz. 33, ¶¶ 27-28, 116 P.3d 1193, 1204 (2005).

¶10 In this case, the trial court had before it Geen's report concluding that Cruz was able to understand the proceedings and assist in his own defense and that he had been "malingering symptoms of a psychotic disorder." Cruz describes Geen's opinion that Cruz was malingering as "individual conjecture," but he has not challenged Geen's qualifications as an expert. And, Geen's conclusion was consistent with the opinions of Cruz's treating physician. Further, the trial court also considered its own observations of Cruz's demeanor and comprehension. *See Glassel*, 211 Ariz. 33, ¶ 28, 116 P.3d at 1204 (trial judge may "rely on personal observations in determining competency"), *citing State v. Arnoldi*, 176 Ariz. 236, 239, 860 P.2d 503, 506 (App. 1993).

¶11 Under the circumstances, and given the information available to it, the trial court did not abuse its discretion by failing sua sponte to order a new competency hearing based on Cruz's single statement to a defense investigator that the proposed plea agreement contained "the devil's writing." Nor was the court required to do so based on the mention of psychotic features in Becker's and Morenz's reports, which pre-dated Geen's, or on the other historical, background factors to which Cruz points (e.g., prior drug use, alcohol abuse, auditory hallucinations, aggressive outbursts, and suicidal ideation). It was for the

trial court to evaluate those factors in context and to weigh the differing expert opinions on Cruz's competency.

Sufficiency of the Evidence

¶12 Cruz next challenges the sufficiency of the evidence to support the burglary and theft convictions. "To set aside a jury verdict for insufficient evidence it must clearly appear that upon no hypothesis whatever is there sufficient evidence to support the conclusion reached by the jury." *State v. Arredondo*, 155 Ariz. 314, 316, 746 P.2d 484, 486 (1987). A person commits burglary by "entering or remaining unlawfully" in a "residential structure with the intent to commit any theft or felony therein." A.R.S. § 13-1507(A). The burglary is in the first degree if the person also "knowingly possesses . . . a deadly weapon or a dangerous instrument in the course of committing any theft or any felony." A.R.S. § 13-1508(A).

¶13 Cruz does not contest the sufficiency of the evidence to show that he had entered the victim's home with the requisite intent or the evidence supporting the charge as a crime in the first degree. He argues only that the state failed to prove he had entered or remained in the victim's home "unlawfully" because there was no evidence that Garcia, who had been living with the victim before the murder, had not been "entitled to extend an invitation or license to [Cruz] to enter or remain in the [victim's] home." Similarly, he contends the state failed to prove he had taken the victim's truck "*without lawful authority*" because "there was no evidence that . . . Garcia did not have permission to use her father's

truck." *See* A.R.S. § 13-1814(A)(1) (A person commits theft of a means of transportation by, "without lawful authority," controlling another's means of transportation intending to permanently deprive the other of it.).

¶14 Cruz's arguments are meritless. The jury was not required to infer from the fact that Garcia had been living with the victim that she had had permission to invite Cruz into the victim's home. In fact, there was evidence to the contrary. The victim's son testified that, on December 22, 2004, just before the murder, Garcia had told him that their father had "kicked her out" of the house and that his sister's friends had not been "allowed in [his] father's home." And, even if Garcia had been authorized to invite Cruz into the victim's home, the jury was not required to infer that she had had authority to do so for the purpose of committing murder. *See State v. Altamirano*, 166 Ariz. 432, 435, 803 P.2d 425, 428 (App. 1990) ("It is clear that although a person enters another's premises lawfully and with consent, his presence can become unauthorized, unlicensed, or unprivileged if he remains there with the intent to commit a felony."); *State v. Embree*, 130 Ariz. 64, 66, 633 P.2d 1057, 1059 (App. 1981) ("When a person's intent in remaining on premises is for the purpose of committing 'a theft or some felony therein,' such individual is no more welcome than one who initially entered with such intent."). In this case, the jury unanimously found Cruz guilty of first-degree, premeditated murder, and the evidence supported the conclusion that Cruz and Garcia had planned to murder the victim before they entered the house.

¶15 Likewise, the jury was not required to infer that Garcia had had permission to take her father's truck, let alone that she had had permission to allow Cruz to do so, particularly after they had murdered him. And, Cruz's cousin testified that Cruz had told him he had "stole[n] a truck," suggesting Cruz had known the truck was taken without permission. Ample evidence supports Cruz's convictions of burglary and theft. The convictions and sentences are affirmed.

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JOHN PELANDER, Chief Judge

CONCURRING:

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J. WILLIAM BRAMMER, JR., Judge

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PETER J. ECKERSTROM, Judge